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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.M. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

F.G.,

Defendant and Appellant.

B293445

Los Angeles County
Super. Ct. No. DK15166

APPEAL from orders of the Superior Court of Los Angeles
County, Natalie P. Stone, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Peter Ferrera, Principal Deputy
County Counsel, for Plaintiff and Respondent.

* * * * *

This dependency case involves Mother, two of her children, and Maternal Grandmother. After Mother was placed on two involuntary psychiatric holds, the Department of Children and Family Services filed a petition as to these two children, then eight and two years old. On grounds of the parental beneficial relationship exception, Mother contested the Department's recommendation the children be found adoptable. The juvenile court rejected Mother's argument because Grandmother had become the central parental figure in the children's lives in the preceding three years. The juvenile court terminated all parental rights. Mother alone appeals. All statutory citations are to the Welfare and Institutions Code.

I

We begin with a factual summary.

The Department received a referral in January 2016 after a report of domestic violence between Mother and Father. Father threw a wallet at Mother, striking her in the face while the children were present. There were other violent episodes as well. The Department investigated and on January 14, 2016 filed a section 300 petition on behalf of the children. The Department alleged the children were at risk because of violent conflicts between the parents and Father's substance abuse. The juvenile court ordered the children to be detained from Father and released to Mother. The juvenile court later issued a restraining order protecting Mother and the children from Father.

The nature of the risk the children faced changed, however, when Mother was placed on an involuntary psychiatric hold on February 13, 2016. Mother's initial diagnosis was bipolar I disorder and postpartum depression, but a later diagnosis was chronic psychotic schizophrenia. Mother did not take her medication and was violent. Mother was released the next day, but then re-entered

the hospital on February 15, 2016. She was hallucinating and was not taking medication. Mother's initial 72-hour hold was extended through February 22, 2016.

The Department detained the children from Mother on February 26, 2016 and placed them with Grandmother, who had in fact been caring for them July 2015. Mother re-entered in-patient care again on February 29, 2016.

The Department filed a first amended section 300 petition on March 2, 2016 alleging the children were also at risk from Mother's mental and emotional problems. The juvenile court removed the children from Mother's custody and ordered family reunification services.

On August 15, 2016, the juvenile court ordered Mother have overnight visits at Grandmother's twice a month. At the six-month review hearing on October 19, 2016, the Department reported the children were thriving with Grandmother and had bonded with her household, which included great-grandparents and her husband.

Grandmother kept the Department up-to-date about the children's situation and her own opinion of her daughter's progress. At the beginning of Mother's treatment, which included therapy and medication, Grandmother was not comfortable with Mother living in her home. Although the children enjoyed having Mother's visits, Grandmother did not believe Mother was capable of caring for the children as a parent without Grandmother's supervision. Grandmother prepared to retire from her job to care for her grandchildren full-time.

As Mother's ability to cope with her condition improved, Grandmother continued to keep the Department informed. Grandmother asked the Department if Mother could now move into her home to be with her and the children, but cautioned she believed adoption was still the best future for the children. At a

hearing on June 7, 2017, the juvenile court permitted Mother to move back into the home. At that same hearing, the juvenile court terminated reunification services for Mother and Father and set the matter for a section 366.26 hearing to determine a permanent plan for the children.

At the initial section 26 hearing, the Department reported the children appeared happy and comfortable in Grandmother's home. Grandmother provided for their medical needs, made their appointments and drove them, prepared them for school, and monitored their performance. Mother assisted with cooking and homework.

In August 2018, the Department told the court that "[d]uring home visits to the children, mother is observed to be disheveled and malodorous and does not attend to her own hygiene." At this same time, the Department saw Grandmother caring for the children with "passion."

Grandmother wrote the court on August 21, 2018 that, "[o]n the last court date, I was surprised to hear about [Mother's] attorney requesting legal guardianship. [Mother] is not capable of taking care of the children by herself, and leaves the responsibility of the children with me. She never takes initiative or shows interest in making appointments for them or making sure they do their daily activities, go to bed on time etc. I take care of her with transportation, shelter, and financially. She comes and goes whenever she wants without considering her children. Although she is doing better, she does not take care of herself medically."

Mother thereafter moved the juvenile court to contest the section 26 recommendation that the children be adopted and her parental rights be terminated. The Father did not join in her motion. Grandmother said she was surprised Mother contested the

proposed adoption because Mother was not capable of parenting by herself.

After Mother contested the Department's recommendation, Grandmother continued to write the Department. Grandmother noted continued improvement in Mother's functioning. Grandmother believed Mother was more helpful in the evenings because the side effects of her daughter's medication would then wear off. Mother contributed to the household only by doing laundry, helping her youngest with homework, and cooking occasionally. Grandmother continued to seek to adopt the children because she loved them, and despite Mother's improvement, Mother was not taking initiative to care for them.

At the section 26 hearing, the juvenile court heard testimony from Grandmother and Mother. The children – now ages four and ten – had by then lived with Grandmother for three years. Grandmother testified she did the cooking, cleaning, washing, shopping, getting the children up and ready for school, scheduled and drove the children to their medical appointments, spoke with teachers, and attended extracurricular activities. Grandmother also testified she wished Mother would continue to stay in the home after the juvenile court's ruling because the children loved their mother, and it would hurt the children for them not to see their mother anymore. Grandmother was still not comfortable leaving Mother alone with the children for more than a short time. Mother did not disagree.

Mother argued the parental beneficial relationship exception provided by section 366.26, subdivision (c)(1)(B)(i) should apply and should stop the adoption process. That section provides that if a parent can prove by a preponderance of evidence he or she has (1) maintained regular visitation and contact with the child, and (2) the child would benefit from continuing the relationship to such a

degree that terminating parental rights would be detrimental to the child, the court cannot terminate parental rights even though the child is likely to be adopted. (See § 300, subd. (b)(1).) Because Mother lived in Grandmother's with the children, she met the first prong of this exception. But counsel for the children and the Department argued Mother did not meet the second prong because Grandmother – not Mother – was the central parental figure, and the benefit to the children from continuing their relationship with Mother did not outweigh the benefit of adoption.

The juvenile court agreed the first prong was met. The court then considered the age of the children, how long they lived with Mother versus how long they have lived with Grandmother, and the children's needs, and agreed Grandmother had become the central parental figure in the children's lives. Having found that no exception to adoption applied, the court terminated parental rights. The court then appointed Grandmother as the prospective adoptive parent and their educational rights holder.

II

We affirm because the trial court was right.

Our review of an order on the beneficial relationship exception is deferential. (See *In re K.P.* (2012) 203 Cal.App.4th 616, 621–622 [noting conflict over whether substantial evidence or abuse of discretion is the right standard but concluding there is no significant difference].) On this record, however, we would affirm under any standard of review.

The issue in this case turns on a statutory subsection: section 366.26, subdivision (c)(1)(B)(i), which we will shorten to “(c)(1)(B)(i)” for convenience. This general statutory provision creates a pathway for adoption, which generally involves terminating the parental rights of the biological parents. The statute creates an exception for termination of parental rights when a parent has maintained

regular visitation and contact with the child and when the child would benefit from continuing the parental relationship. (§ 366.26, subd. (c)(1)(B)(i).) The sole legal issue in this case is whether the court properly ruled that (c)(1)(B)(i) was no barrier to terminating Mother's parental right and to proceeding with Grandmother's adoption. The court ruled these children would not benefit from continuing the parent-child relationship with Mother.

The court's ruling was correct, under any standard of review.

Illness has afflicted Mother through no one's fault or choice. The illness has disabled Mother's ability to give reliable and complete care to these two children. Mother has not been completely able to care for herself. Mother's diligent counsel has been unable to discover a case in which a court has barred an adoption under the conditions we have here.

Fortunately, Grandmother's selfless nurture has provided an umbrella of shelter for all in the household, including Mother. Grandmother has been the main child caregiver. She has done the lion's share of this work. She has anchored these children to a rock of predictable stability and love.

We have no doubt Mother loves her children and her children have benefited immeasurably from that sustaining relationship of love. But parenthood imposes grave responsibilities beyond love. There are chores large and small. A lot must get done. The juvenile court thoughtfully and compassionately assessed the situation and reached a sound decision we can but endorse.

DISPOSITION

We affirm.

WILEY, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.